

A. The ResponseTrak Solution is Equitable, Just, and Reasonable.

44. The ResponseTrak solution is an equitable resolution of this issue. The definition of an Enterprise Number is sufficiently broad to afford the widest possible protection to existing subscribers without becoming inefficient or counterproductive. The Commission has already recognized the propriety of restricting protection to business subscribers. "We find that, in contrast to other 800 subscribers, personal subscribers have no commercial interest in their 800 numbers that competitors might seek to undermine." *Report and Order*, 11 FCC Rcd at 2498. The Enterprise Number solution simply takes this a step further, and is even more equitable and less discriminatory in that it identifies applications and usage actually requiring protection, rather than basing protection on some arbitrary categorization of the subscriber or the number.

45. This approach is also equitable in the sense that it gives protection to the particular segment of the business community that actually built toll free calling into the valuable public asset it has become. It protects the businesses who across the decades have developed an entire industry on the use of toll free numbers to allow the public to communicate with them on a many-to-one basis. Similarly, the toll free industry at large has a vested interest in protecting its investment in toll free calling generally.

46. Even the general public recognition of 1-800 as a toll free call is attributable to more than twenty-five years of investment, use, and advertising of toll free numbers by their subscribers. While AT&T may have invented 800 service, it was United States businesses that developed and perfected the many-to-one use of 800 numbers. The concept of free long distance calling has been linked in the public to the 800 area code as the direct result of an incredible financial investment by private sector businesses. It took literally billions of dollars in advertising expense and a quarter of a century to firmly establish consumer understanding and acceptance of toll free dialing to reach businesses located outside the consumer's immediate calling area. Every space ad in a periodical featuring an 800 number; every catalog and direct-

mail flyer with an 800 number; every milk carton; every infomercial; every radio and television ad appealing to the listener or viewer to take immediate action contributed to this understanding and acceptance.

47. For more than twenty-five years every ad took pains to remind the prospective customer, again and again, that calls to 800 numbers were *free*. Many still do. Ed McMahon and Colonial Penn still remind callers seeking information about insurance that the call is free, and they do so several times in each television ad. Today, more advertising space and more air-time are still devoted to reminders that the call is free, than are devoted to assurances that a salesman will not call.

48. This has created not only an important business asset for the subscribers, but also an important public interest benefit for the callers and potential callers. It is truly an example of how market forces can and have done a better job than governmental regulation in bringing needed, valued, and useful communications service to the public. There is certainly nothing inequitable in a regulatory structure designed to protect that.

B. The Enterprise Solution in Nondiscriminatory and Efficient.

49. The Enterprise Number solution is in the nature of a "domain" or "partitioning" approach. The Commission previously considered and rejected partitioning as a solution. *Second Report and Order*. 12 FCC Rcd 11162 at ¶ 67. The Commission reasoned that partitioning would be discriminatory and inefficient. The Commission had in mind, however, an ambitious concept of partitioning in which there would be an effort to distinguish among many different types of private one-to-one and few-to-one applications (pagers, voice mail, cell phones, residential). The ResponseTrak proposal is simple. There are only two categories: Enterprise and Communicator. It is that simplicity that makes the plan both nondiscriminatory and highly efficient, while also very effective in protecting the investment of existing Enterprise subscribers. As shown below,

the Commission's concerns regarding both discrimination and inefficiency are more than adequately accommodated by ResponseTrak's Enterprise Number solution.

50. Discrimination. The Commission was concerned that "partitioning would be unreasonably discriminatory because 800 numbers would, at least initially, enjoy greater recognition than would numbers in new toll free SACs." *Id.*³ ResponseTrak's Enterprise Number solution removes this problem. The only distinction made between numbers is whether they are Enterprise Numbers or Communicator Numbers. Enterprise Numbers are assigned from their designated SACs on a nondiscriminatory basis to all bona fide qualified subscribers in that class, as are Communicator Numbers. Enterprise Numbers will be assigned from the more widely recognized 800 and 888 toll free SACs, and Communicator Numbers are assigned from the less familiar 877 and future SACs. But this is not unreasonably discriminatory. Communicator Numbers will be used for private one-to-one and few-to-one applications that do not depend on broad public awareness. This distinction between Enterprise and Communicator is simple and yet very broad. It is no more discriminatory than its first cousin, the distinction between business and residential use.

51. Inefficiency. The Commission was also concerned about the likely inefficiency and possible high cost of partitioning SACs:

[P]artitioning would require multiple 8XX codes to be opened immediately, which is not possible because the necessary software is still being developed. [I]t would be inefficient and costly to assign SACs by service when it is unclear that there would be sufficient service demand to consume most, if not all, of the numbers in a particular code. It is also unclear who would pay for development of multiple SACs if there were little demand for numbers within a particular code

³ The Commission also feared a discriminatory effect because "[n]on-conforming" entities (e.g., non-business applications such as paging and fax services) permitted to grandfather their numbers in 800 would have an advantage over competitors that would have to use a new SAC." *Id.* ResponseTrak's proposal would not grandfather Communicator uses. Current holders of Enterprise Numbers for Communicator uses will be required, during a transition period, to relinquish their Enterprise Numbers to be replaced by Communicator Numbers.

and, therefore, insufficient revenue to justify opening a new code. [S]ome codes currently reserved for toll free service may be used for another purpose if the relative demands for INPAs change, which could not occur if toll free service was partitioned by SAC.

Id. The Enterprise/Communicator model is efficient, simple, and avoids this problem altogether. There are only two "partitions" under ResponseTrak's solution: Enterprise and Communicator. Each SAC is assigned to one or the other. Initially, 800 and 888 would be for Enterprise Numbers and 877 would be for Communicator Numbers. When either category nears depletion of its SAC, a new SAC will be opened for that class. There is no "wasted" space in the numbering spectrum with this approach.

VIII. REQUEST FOR IMMEDIATE INTERIM RELIEF

52. The Commission correctly assessed its regulatory task very early on in this proceeding: "[W]e must balance goodwill and the holder's interest in a vanity 800 number against the need to manage a limited resource." *NPRM*, 10 FCC Rcd at 13702. Nearly two and one-half years later, however, the Commission still has not determined how to do that. Meanwhile, the 800 SAC is nearly depleted, 888 implementation is two years old, and the 877 SAC is scheduled for rollout in less than two months. It would be an abdication of the Commission's public interest responsibilities to allow yet another toll free SAC to open without finally and permanently establishing a comprehensive, effective, efficient, and equitable policy for protection of existing toll free subscribers. ResponseTrak has presented herein just such a solution.,

53. ResponseTrak respectfully urges the Commission to defer the opening of any further toll free SACs, including the 877 SAC which is currently scheduled for rollout on April 5, 1998, pending evaluation of ResponseTrak's Enterprise Number concept and final adoption of a comprehensive vanity number policy. ResponseTrak believes that, if the Commission gives expedited consideration to this matter, any delay in the opening of the 877 SAC would be

relatively brief, and that any inconvenience would be a small price to pay for having a permanent protection policy in place *before* the new SAC opens.

54. If the Commission determines that it will be absolutely necessary to open the 877 SAC prior to final resolution of this matter, interim measures must be imposed. Specifically, the Commission should require that, pending final resolution of this issue, all future assignment of 800 and 888 numbers will be restricted to public many-to-one uses, and that any toll free numbers required for personal, residential, or access (i.e., private one/few-to-many applications) be assigned from the 877 SAC.

IX. CONCLUSION

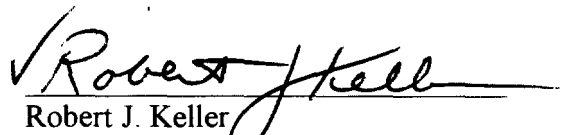
WHEREFORE, good cause and public interest justification having been shown, ResponseTrak requests the Commission to: (a) consider and adopt ResponseTrak's Enterprise/Communicator Number solution on an expedited basis, (b) defer opening of any new toll free SACs pending final resolution of this matter, or (c) in the alternative, adopt interim protection measures pending final resolution of this matter as described in Section VII above.

Respectfully submitted,

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